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Paper No.

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DEC 11 2008

OFFICE OF PETITIONS

In re Patent No. 7,365,084 : LETTER
Issued: 04/29/2008 : REGARDING
Application No. 10/788,997 : PATENT TERM ADJUSTMENT
Filed: February 27, 2004 : AND
Atty Docket No. : NOTICE OF INTENT TO ISSUE
DEAV2003/0081US NP : CERTIFICATE OF CORRECTION

This letter is in response to the "LETTER OF GOOD FAITH AND CANDOR REGARDING PATENT TERM UNDER § 37 C.F.R. § 1.705," filed on June 27, 2008. Patentee requests that the Patent Term Adjustment for the above-identified patent be reduced by 123 days from 520 days to 397 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated.**

Patentees are given TWO (2) MONTHS to respond to this decision. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of four hundred (400) days.

On April 29, 2008, the above-identified application matured into U.S. Patent No. 7,365,084. The Patent issued with a revised Patent Term Adjustment of 520 days. This revised determination was calculated as follows: The initial determination of PTA of 447 days was increased by 73 days.

Patentee states that the patent term adjustment period should be reduced for the filing, on September 18, 2007, of an amendment after the mailing of a notice of allowance. Patentee states

that the applicant delay is believed to be 152 days, and that a total patent term adjustment period of 397 days, rather than 500 days, is correct.

Patentee states the application is not subject to a terminal disclaimer.

37 CFR 1.704(c)(10) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

On July 26, 2007, a notice of allowance was mailed. On September 18, 2007, an amendment under 37 CFR 1.312 was filed. On March 25, 2008, a response to the amendment under § 1.312 was mailed. As the response to the amendment under § 1.312 was mailed more than four (4) months after the date the amendment under § 1.312 was filed, the period of reduction of patent term adjustment under 37 CFR 1.704 is four (4) months, or 120 days.

In view thereof, the patent term adjustment indicated on the patent should be four hundred (400) days.

As the instant letter was submitted to advise the Office of an error in Patentee's favor, the \$200.00 application fee under 37 CFR 1.705(b) was not required, and has not been charged.

The Office thanks Patentees for their good faith and candor in bringing this matter to the attention of the Office.

The application is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of

correction indicating that the term of the above-identified patent is extended or adjusted by FOUR HUNDRED (400) days.

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,365,084 B2

DATED : April 29, 2008

INVENTOR(S) : Christian Stapper et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (520) days

Delete the phrase "by 520 days" and insert – by 400 days--